

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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	:	Chapter 11
In re:	:	
FLEMING COMPANIES, INC., <u>et al.</u> ,	:	Case No. 03-10945 (MFW)
	:	
Debtors.	:	Jointly Administered
	:	
	:	
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**ORDER (A) APPROVING ASSET PURCHASE AGREEMENT BY AND AMONG
FLEMING COMPANIES, INC., C&S WHOLESALE GROCERS, INC., C&S
ACQUISITION LLC AND THE OTHER PARTIES NAMED THEREIN, (B)
AUTHORIZING (I) SALE OF SUBSTANTIALLY ALL OF SELLING DEBTORS'
ASSETS RELATING TO THE WHOLESALE DISTRIBUTION BUSINESS TO
PURCHASER OR ITS DESIGNEE(S), FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES AND INTERESTS AND (II) PROCESS FOR ASSUMPTION AND
ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS, LICENSE AGREEMENTS
AND UNEXPIRED LEASES TO PURCHASER OR ITS DESIGNEE(S) AND
ESTABLISHING THE MAXIMUM CURE AMOUNT
WITH RESPECT THERETO AND (C) GRANTING RELATED RELIEF**

Upon the motion¹ (the "Sale Motion") dated July 11, 2003 of Fleming Companies, Inc., Fleming Transportation Service, Inc., Piggly Wiggly Company, RFS Marketing Services, Inc., Fleming International, Ltd., Fleming Foods of Texas, L.P., and Fleming Foods Management Co., LLC (collectively, the "Selling Debtors"), seven of the above-captioned debtors and debtors in possession (collectively, the "Debtors")² in the above-captioned cases, for entry of an order, under sections 105(a), 363(b), (f), and (m), 364, 365, and 1146(c) of title 11 of the United States

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the APA (as defined herein) and the Sale Motion, and to the extent of any inconsistency, the APA shall govern.

² The Debtors are the following entities: Fleming Companies, Inc.; ABCO Food Group, Inc.; ABCO Markets, Inc.; ABCO Realty Corp.; ASI Office Automation, Inc.; C/M Products, Inc.; Core-Mark Interrelated Companies, Inc.; Core-Mark Mid-Continent, Inc.; Dunigan Fuels, Inc.; Favar Concepts, Ltd.; Fleming Foods Management Co., L.L.C.; Fleming Foods of Texas, L.P.; Fleming International, Ltd.; Fleming Supermarkets of Florida, Inc.; Fleming Transportation Service, Inc.; Food 4 Less Beverage Company, Inc.; Fuelserv, Inc.; General Acceptance Corporation; Head Distributing Company; Marquise Ventures Company, Inc.; Minter-Weisman Co.; Piggly Wiggly Company; Progressive Realty, Inc.; Rainbow Food Group, Inc.; Retail Investments, Inc.; Retail Supermarkets, Inc.; RFS Marketing Services, Inc.; and Richmar Foods, Inc.

Code (the “Bankruptcy Code”) and Rules 2002, 6004, 6006, 9014 and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), (A) approving the asset purchase agreement (as amended from time to time, the “APA”; a copy of the original of which was attached to the Sale Motion and was amended by that letter agreement dated August 4, 2003 that was introduced into evidence at the Sale Hearing (the “Letter Agreement”)) by and among the Selling Debtors (C&S Acquisition LLC, as Purchaser (including any affiliated assignee or designee of such company, the “Purchaser”) and C&S Wholesale Grocers, Inc. (“C&S”), and such other agreements to be entered into among the parties thereto as contemplated therein, (B) authorizing (i) the sale (the “Sale”) of substantially all of the Selling Debtors’ assets and business operations relating to their Wholesale Distribution Business and certain other assets designated in the APA (the “Acquired Assets”) free and clear of all Liens, claims, Encumbrances, Offset Rights (as defined in the Letter Agreement), and Interests (except the Permitted Encumbrances and Assumed Liabilities under the APA), pursuant to and as described in the APA to Purchaser or any Third Party Purchaser (as defined herein), as the case may be, and (ii) the assumption and assignment to Purchaser or any Third Party Purchaser, as the case may be, of executory contracts and unexpired leases under sections 365(a) and (f) of the Bankruptcy Code both as of the Initial Closing Date and during the Option Period, and (C) granting related relief; and upon the Order of this Court dated July 18, 2003, approving the bidding procedures in connection with the Sale and notice of the hearing with respect to the Sale (the “Bidding Procedures Order”); and a hearing having been held on August 4, 2003, continued to August 7, 2003, and further continued to August 14, 2003 in connection with the Sale Motion (the “Sale Hearing”); and all parties in interest having been heard, or having had the opportunity to be heard, regarding the Sale; and the Court having considered (x) the Sale Motion, (y) the objections to the Sale Motion (other than objections with

respect to assumption and assignment of Acquired Contracts, which objections were deferred), and (z) the arguments made and evidence proffered or adduced in support of approval of the Sale at the Sale Hearing; and it appearing from the affidavits of service filed with the Court that due and sufficient notice of the Sale Motion and the relief granted by this Order, have been provided to all parties affected thereby (the “Sale Notice”); and it further appearing that no other or further notice hereof is required; and upon the Court record of these cases; and the Court having received evidence in support of the approval of the APA and the Sale; and it appearing that the relief requested in the Sale Motion and approved hereby is in the best interests of the Selling Debtors, their estates, creditors, and other parties-in-interest; and upon the record of the Sale Hearing and these chapter 11 cases including the decision of the Court to approve the Sale Motion, APA, and Sale as reflected on the record of the Sale Hearing; and after due deliberation and good and sufficient cause appearing therefor, this Court hereby makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW:

IT IS HEREBY FOUND AND DETERMINED THAT:³

Jurisdiction, Final Order and Statutory Predicates

A. The Court has jurisdiction to hear and determine the Sale Motion and to grant the relief requested therein, pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(b). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (N) and (O).

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(g) and 6006(d), the parties may

³ Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate. See Fed. R. Bankr. P. 7052. Any statements of the Court from the bench at the Sale Hearing shall constitute additional findings of fact and conclusions of law as appropriate and are expressly incorporated by reference into this Order to the extent not inconsistent herewith.

consummate the Sale immediately upon entry of this Order. To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order.

C. The statutory predicates for the relief sought in the Sale Motion are sections 105(a), 363(b), (f), and (m), 364, 365, and 1146(c) of the Bankruptcy Code, as complemented by Rules 2002(a)(2), 6004(a), (b), (c) and (e), 6006(a) and (c), 9014 and 9019 of the Bankruptcy Rules.

Retention of Jurisdiction

D. It is necessary and appropriate for the Court to retain jurisdiction to, among others things, interpret, implement, and enforce the terms and provisions of this Order and the APA, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith (including without limitation, the Transition Services Agreement (as hereinafter defined)), and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale.

Notice of the Sale Motion and Auction, Original Cure Notice and Supplemental Cure Notice

E. As evidenced by the affidavits of service previously filed with this Court, proper, timely, adequate, and sufficient notice of the Sale Motion, the Sale Hearing, and the Sale has been provided in accordance with sections 102(1) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 9014 and in substantial compliance with the Bidding Procedures Order.

F. Actual written notice of the Sale Hearing, the Sale Motion, and the Sale and a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief

requested therein has been afforded to all interested persons and entities, including, but not limited to: (i) counsel to the Committee; (ii) counsel to the Agents (as defined below); (iii) counsel to Purchaser; (iv) all Potential Bidders and any party who has expressed in writing an interest to acquire the Wholesale Distribution Business; (v) counsel to the United States Trustee; (vi) any entity that has filed a notice of appearance and demand for service of papers in these bankruptcy cases pursuant to Bankruptcy Rule 2002; (vii) all parties holding Liens against the Selling Debtors' estates; (viii) all non-debtor counterparties to Acquired Contracts; (ix) all creditors of the Selling Debtors listed on the master mailing matrix; and (x) all parties in interest in these cases.

G. The Sale Notice was published in the National Edition of the *Wall Street Journal*, and at least one regional paper where each of the operating distribution centers for the Wholesale Distribution Business are located as soon as practicable after the approval of the Sale Notice.

H. In accordance with the provisions of the Bidding Procedures Order, the Debtors have served the cure notice as set forth in the Bidding Procedures Order (the "Original Cure Notice") and the supplemental cure notice as set forth in the Bidding Procedures Order (the "Supplemental Cure Notice") upon each non-debtor counterparty to an Acquired Contract (except as to the counterparties to the Military Supply Agreements and Private Label Supply Agreements as defined in the Letter Agreement) that the Selling Debtors may wish to assume and assign on the Initial Closing Date or during the Option Period. The Service of such Original Cure Notice and such Supplemental Cure Notice were, together, good and sufficient and appropriate under the circumstances and no further notice need be given in respect of establishing the Maximum Cure Amount (as defined below) for applicable Acquired Contracts. Such non-debtor counterparties have had an opportunity to object to the Cure Amount set forth

on the Original Cure Notice.

I. The Selling Debtors have complied with all obligations to provide notice of the Sale Motion, Auction, Sale Hearing, Sale and Initial Assignment List required by the Bidding Procedures Order. The foregoing notice described in paragraphs E through H was good and sufficient and appropriate under the circumstances, and no other or further notice of the Sale Motion, the Sale Hearing, or the Sale is required.

J. The disclosures made by the Selling Debtors concerning the APA, the Sale, and the Sale Hearing were good, complete and adequate.

Consent of Secured Lenders and Committee

K. Deutsche Bank Trust Company Americas and JPMorgan Chase Bank, (i) individually as lenders and in their capacity as agents (in such capacity, the “DIP Agents”) under that certain Credit Agreement, dated as of May 6, 2003, among Fleming Companies, Inc. and certain of its subsidiaries party thereto, the lenders party thereto, and the DIP agents (the “DIP Credit Agreement”), and (ii) solely in their capacity as lenders under that certain Credit Agreement, dated as of June 18, 2002, among Fleming, JPMorgan Chase Bank and Citicorp North America, Inc., as syndication agents, Lehman Commercial Paper Inc. and Wachovia Bank, National Association, as documentation agents, Deutsche Bank Securities Inc. and JPMorgan Securities Inc., as joint book managers, Deutsche Bank Securities Inc., JPMorgan Securities Inc. and Salomon Smith Barney Inc., as joint lead arrangers and Deutsche Bank Trust Company Americas, as administrative agent (JPMorgan Chase Bank and Deutsche Bank Trust Company Americas, in their capacities as agents under the Pre-Petition Credit Agreement, the “Pre-Petition Agents” and, together with the DIP Agents, the “Agents”), and the various lenders from time to time party thereto (the “Pre-Petition Credit Agreement”) consent to the entry of this Order, to the terms and conditions of the APA, and to the consummation of the Sale.

L. Notwithstanding anything to the contrary contained in the Final Order Authorizing (I) Post-Petition Financing Pursuant to 11 U.S.C. § 364 and Bankruptcy Rule 4001(c); (II) Use of Cash Collateral Pursuant to 11 U.S.C. § 363 and Bankruptcy Rules 4001(b) and (d); (III) Grant of Adequate Protection Pursuant to 11 U.S.C. §§ 361 and 363; and (IV) Approving Secured Inventory Trade Credit Program and Granting of Subordinate Liens, Pursuant to 11 U.S.C. §§ 105 and 364(c)(3) and Rule 4001(c), entered by this Court on May 6, 2003 (the “Final DIP Order”) or any other order of the Court governing post-petition financing or use of cash collateral, subject to Selling Debtors’ receipt of the Purchase Price, the liens granted pursuant to any such orders to the Pre-Petition Lenders, the DIP Lenders or any trade creditor shall not encumber (i) any of the Acquired Assets, on and after the Applicable Closing Date with regard to such Acquired Assets, (ii) any property relating to the Business first arising or coming into any Selling Debtor’s possession after the Initial Closing Date, including without limitation, any accounts receivable generated by the Business after the Initial Closing Date, or (iii) any other property of Purchaser or any Third Party Purchaser, as the case may be, located at any PSC; provided, however, that any and all such liens shall attach to the net proceeds of the Sale in their order of priority, with the same validity, force and effect that they now have as against the Acquired Assets, subject to any claims and defenses the Selling Debtors and their estates may possess with respect thereto and subject to the provisions of paragraph 6.

M. The Committee supports the entry of this Order and the consummation of the Sale.

Good Faith of C&S, Purchaser and Third Party Purchasers

N. Neither C&S nor Purchaser (nor the Third Party Purchasers and their respective affiliates closing on the Initial Closing Date and set forth on Exhibit C attached hereto (the “Initial Third Party Purchasers”)) is affiliated with the Debtors.

O. The terms of the Sale, as set forth in the APA, are fair and reasonable under the circumstances of these chapter 11 cases.

P. Each of C&S and Purchaser (and the Initial Third Party Purchasers) negotiated the terms and conditions of the Sale in good faith and at arm's length, is entering into the Sale in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the protections afforded thereby. Each of C&S and Purchaser (and the Initial Third Party Purchasers) will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the Sale at any time after the entry of this Order, including immediately after its entry. The Court has found that each of C&S and Purchaser (and the Initial Third Party Purchasers) has acted in good faith in all respects in connection with these chapter 11 cases and the Sale in that, among other things:

(1) they recognized that the Selling Debtors were free to negotiate with any other party that expressed qualified interest in purchasing their assets;

(2) they agreed to subject the Stalking Horse Bid to the competitive bidding procedures set forth in the Bidding Procedures Order;

(3) they in no way induced, caused, or required the commencement of the chapter 11 filings of the Debtors;

(4) all payments to be made by Purchaser and other agreements or arrangements entered into by Purchaser with the Selling Debtors in connection with the Sale have been disclosed;

(5) there is no evidence that either C&S, Purchaser, or any Initial Third Party Purchaser has violated section 363(n) of the Bankruptcy Code by any action or inaction;

(6) no common identity of directors or controlling stockholders exists between any of C&S, Purchaser, the Initial Third Party Purchasers, and any of the

Debtors; and

(7) the negotiation and execution of the APA and all other aspects of the Sale were conducted in good faith.

No Other Qualified Bid

Q. No other Qualified Bid was received as of the Required Bid Deadline. Therefore, in accordance with the Bidding Procedures Order and the Bidding Procedures, no Auction was required or held.

Highest and Best Offer

R. The APA constitutes the highest and best offer for the Acquired Assets, and will provide a greater recovery for the Selling Debtors' creditors than would be provided by any other available alternative. The Selling Debtors' determination that the APA constitutes the highest and best offer for the Acquired Assets constitutes a valid and sound exercise of the Selling Debtors' business judgment.

S. The APA represents a fair and reasonable offer to purchase the Acquired Assets under the circumstances of these chapter 11 cases. No other entity or group of entities has offered to purchase the Acquired Assets for greater economic value to the Selling Debtors' estates than Purchaser.

T. The Sale is not being entered into to escape liability for the estates' debts.

No Fraudulent Transfer

U. The consideration provided for the Acquired Assets pursuant to the APA constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

Validity of Transfer

V. The transfer of each of the Acquired Assets to Purchaser or any Third Party

Purchaser, as the case may be, is or will be as of the Applicable Closing Date a legal, valid, and effective transfer of such assets, and vests or will vest Purchaser, or any Third Party Purchaser, as the case may be, with all right, title, and interest of the Selling Debtors to the Acquired Assets free and clear of all Encumbrances, Offset Rights, and other Interests accruing, arising or relating to any time prior to the Applicable Closing Date, including without limitation, (a) trade vendor liens, PACA trust claims and PASA trust claims and other state statutes of similar import, reclamation claims, and (b) Encumbrances, Offset Rights, or Interests (i) that purport to give to any party a right or option to effect any forfeiture, modification or termination of the interest of any Debtor or of Purchaser or any Third Party Purchaser, as the case may be, in the Acquired Assets, (ii) in respect of Taxes, or (iii) that are listed on the Selling Debtors' schedule as filed with the Bankruptcy Court on July 1, 2003 as may be amended as permitted under the Bankruptcy Rules, except, in all cases, for the Permitted Encumbrances and Assumed Liabilities.

W. C&S and Purchaser would not have entered into the APA and would not consummate the Sale contemplated thereby, thus adversely affecting the Debtors, their estates, and their creditors, if the Sale of the Acquired Assets (other than Acquired Contracts) to Purchaser or any Third Party Purchaser, as the case may be, and the assignment of the Acquired Contracts to Purchaser or any Third Party Purchaser, as the case may be, were not free and clear of all Encumbrances, Offset Rights, and Interests against the Selling Debtors or their estates (except the Permitted Encumbrances and Assumed Liabilities under the APA), or if C&S, Purchaser, or any Third Party Purchaser, as the case may be, would be liable for any of the Excluded Liabilities, including, without limitation, those listed in Section 2.4 of the APA.

Section 363(f) Is Satisfied

X. The Selling Debtors may sell the Acquired Assets (other than the Acquired Contracts) free and clear of all Encumbrances, Offset Rights, and other Interests against the

Selling Debtors or their estates (except the Permitted Encumbrances and Assumed Liabilities under the APA) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Encumbrances, Offset Rights or Interests against the Debtors or their estates who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such Encumbrances or Interests who did object fall within one or more of the other subsections of section 363(f) and are adequately protected by having their Encumbrances or Interests, if any, in each instance against the Selling Debtors or their estates, attach to the cash proceeds of the Sale ultimately attributable to the property in which they allege an interest. Certain holders of alleged Offset Rights are adequately protected as set forth in paragraph 6 below.

Compelling Circumstances for Immediate Sale

Y. The Selling Debtors have demonstrated both (i) good, sufficient, and sound business purpose and justification and (ii) compelling circumstances for the Sale pursuant to section 363(b) of the Bankruptcy Code prior to a chapter 11 plan in that, among other things, the value of the Wholesale Distribution Business is extremely time-sensitive given the importance of customer relationships to that business and the threatened continued erosion of these relationships, and that any sale taking place after the time contemplated by the parties would likely yield markedly less value than the Sale contemplated hereby, due to the potential for additional customer defections.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, EFFECTIVE IMMEDIATELY, AS FOLLOWS:

General Provisions

1. The relief requested in the Sale Motion is granted and approved as set forth in this

Order, and the Sale contemplated thereby is hereby approved as set forth in this Order.

2. All objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections, are overruled on the merits; provided however, that all objections to the assumption or assignment of Acquired Contracts are reserved and will be addressed on the merits at subsequent hearings on the assumption and assignment of the particular Acquired Contracts.

Approval of APA and Transition Services Agreement

3. The APA, the Transition Services Agreement to be entered into pursuant to the APA (the "Transition Services Agreement"), and all other ancillary documents and all of the terms and conditions thereof are hereby approved in their entirety. To the extent of any conflict or inconsistency between the provisions of this Order and the terms and conditions of the APA, the Transition Services Agreement and such other ancillary documents, as applicable, this Order shall govern and control.

4. Pursuant to section 363(b) of the Bankruptcy Code, the Selling Debtors are authorized and empowered to take any and all actions necessary or appropriate to (i) consummate the Sale of each of the Acquired Assets (other than Acquired Contracts) to Purchaser or any Third Party Purchaser, as the case may be, pursuant to and in accordance with the terms and conditions of the APA, (ii) close the Sale as contemplated in the APA and this Order, and (iii) execute and deliver, perform under, consummate, implement and close fully the APA together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA and the Sale, including without limitation, the Transition Services Agreement and any other ancillary document, and to take all further actions as may be reasonably requested in accordance with the APA by C&S, Purchaser, or any Third Party Purchasers, as the case may be, for the purpose of assigning, transferring, granting, conveying,

and conferring to Purchaser or any Third Party Purchaser, as the case may be, or reducing to possession, the Acquired Assets, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the APA, the Transition Services Agreement, or such other ancillary documents.

5. The terms and provisions of this Order shall be binding in all respects upon C&S, Purchaser, any Third Party Purchaser, and the Selling Debtors, any trustees thereof, their estates, all creditors and shareholders of any of the Selling Debtors, all interested parties, and their respective successors and assigns, including, but not limited to, all non-debtor parties to the contracts, leases, notes (including, but not limited to Promissory Notes (as defined below) and Forgiveness Notes (as defined below)), FSAs, and licenses which may be assigned to Purchaser or any Third Party Purchaser, as the case may be, under the APA.

Transfer of the Acquired Assets (Other than Acquired Contracts)

6. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Selling Debtors are authorized to transfer the Acquired Assets (other than Acquired Contracts) on the Initial Closing Date and, in accordance with Sections 2.5 and 2.6 of the APA, from time to time during the Option Period (including after the expiration of the initial six months of the Option Period as set forth in Section 2.5 of the APA). Such Acquired Assets shall be transferred to Purchaser or any Third Party Purchaser, as the case may be, upon the Applicable Closing Date and, as of such Applicable Closing Date, any such transfer shall constitute a legal, valid, binding and effective transfer of such Acquired Assets and, upon the Selling Debtors' receipt of the Purchase Price, shall be free and clear of (a) all Encumbrances except the Permitted Encumbrances and Assumed Liabilities under the APA, (b) all Offset Rights, and (c) all other Interests, including without limitation, any and all "claims" (as that term is defined in section 101(5) of the Bankruptcy Code), obligations, demands, guaranties, options, debts, rights,

contractual commitments, restrictions, and matters of any kind and nature, whether direct or indirect, monetary or non-monetary, absolute or contingent, matured or unmatured, liquidated or unliquidated, of, by or against Selling Debtors, their estates or such Acquired Assets, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise (including, without limitation, (i) claims and encumbrances that purport to give to any party a right or option to effect any forfeiture, diminution, modification or termination of the interest of the Selling Debtors in such Acquired Assets, (ii) claims and encumbrances in respect of Taxes (other than taxes included in Permitted Encumbrances and Assumed Liabilities), (iii) any claim relating to liability arising under federal, state or local revenue, tax, products liability, labor, worker compensation or environmental laws or with respect to Debtors' liability as a distributor or a retailer or (iv) any claim that Purchaser, C&S, any Third Party Purchaser or any of their Affiliates is a successor to the Selling Debtors arising under federal, state or local law, rule, regulation or at equity), in each case accruing, arising or relating to the period prior to the Applicable Closing Date, with all such Encumbrances and Interests to attach to the net proceeds of the Sale in the order of their priority, with the same validity, force and effect that they now have as against such Acquired Assets, subject to any claims and defenses the Selling Debtors and the Selling Debtors' estates may possess with respect thereto. Upon the Initial Closing Date, Acquired Assets shall be sold free and clear of any Offset Right, if any. With respect to alleged Offset Rights of counterparties to FSAs or supply agreements who (i) have asserted or joined in a demand for adequate protection in a pleading (by memorandum of law or objection) filed or placed on the record by the end of the Sale Hearing, (ii) are counterparties to an FSA or supply agreement that is rejected, and (iii) are parties to a Promissory Note or Forgiveness Note that the Court determines is not an

executory contract or an integrated part of an executory contract, such alleged Offset Right, if any, shall attach (without prejudice to the determination to be made pursuant to the following sentence) to the Fixed Component of Purchase Price subject to the terms of this paragraph 6. Nothing in this Order shall be deemed a determination of the existence, enforceability, validity, priority or extent of the Offset Rights in and to the Fixed Component of Purchase Price, and the Court reserves all such issues for a later determination, including without limitation, whether Offset Rights, are or should be entitled to adequate protection or are otherwise extinguished pursuant to sections 553 and 363 of the Bankruptcy Code. Based on the rights of the holders of such Offset Rights, if any, (i) in and to the Fixed Component of Purchase Price and (ii) against the Debtors' accounts receivable, the Offset Rights shall be deemed adequately protected, to the extent necessary. No portion of the Fixed Component of the Purchase Price shall be distributed absent further order of this Court.

7. Except as expressly permitted by the APA with respect to Permitted Encumbrances and Assumed Liabilities, C&S, Purchaser, or any Third Party Purchaser, as the case may be, shall have no liability or responsibility for any Encumbrance, Offset Right or Interest arising, accruing, or relating to a period prior to the Applicable Closing Date.

8. Notwithstanding anything to the contrary contained in the Final DIP Order or any other order of the Court governing post-petition financing or use of cash collateral, upon the Selling Debtors' receipt of the Purchase Price, the liens granted pursuant to any such orders to the Pre-Petition Lenders, the DIP Lenders or any trade creditor shall not encumber (i) any of the Acquired Assets, on and after the Applicable Closing Date with regard to such Acquired Assets, (ii) property, including Inventory, relating to the Business first arising or coming into any Selling Debtor's possession after the Initial Closing Date, including without limitation, any revenues and

accounts receivable generated by the Business after the Initial Closing Date, or (iii) any other property of Purchaser or any Third Party Purchaser, as the case may be, located at any PSC, with all such property described in clause (i) – (iii) above being the property solely of Purchaser or the applicable Third Party Purchaser, as the case may be, and the Selling Debtors not having any property interest therein; provided, however, that all such liens shall attach to the proceeds of the Sale in accordance with paragraph 6 above.

9. The Selling Debtors are hereby directed to comply with Section 2.09(b) of the DIP Credit Agreement. Without limiting the generality of the foregoing, the Selling Debtors shall use commercially reasonable efforts to calculate the Net Proceeds (as defined in the DIP Credit Agreement) from the Sale, whenever received, and shall direct the Purchaser to promptly pay any such Net Proceeds directly to the Administrative Agent under the DIP Credit Agreement as and in the manner required by Section 2.09(b) of the DIP Credit Agreement to the extent any payment is required. Payments of the Purchase Price made pursuant to this paragraph shall be deemed to be received by the Selling Debtors, and shall not prejudice or alter any claims to the Fixed Component of Purchase Price, which shall be determined without regard to the fact of payment to the Administrative Agent.

Assumption and Assignment of Acquired Contracts
On the Initial Closing Date

10. In accordance with the Bidding Procedures Order, the Selling Debtors, on or about August 4, 2003, filed with the Bankruptcy Court and served via facsimile, email or overnight delivery upon the relevant non-debtor counterparties and their counsel the Initial Assignment List (as defined in the Bidding Procedures Order) setting forth contracts or leases proposed pursuant to the Sale Motion to be assumed and assigned on the Initial Closing Date to the Purchaser or Initial Third Party Purchasers. Any non-debtor counterparties to such Acquired